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Executive Registry
77-498

16 February 1977

25X1 MEMORANDUM FOR:

[Redacted]  
Executive Assistant to  
DCI-Designate

25X1 FROM:

[Redacted]  
Special Assistant to the DCI

SUBJECT: Admiral Turner's Question re the Chapter of the Church Committee's Report Which Concerns the "Organization of the Intelligence Community as a Whole"

1. Attached are excerpts from the Church Committee Report which discuss the organization of the Intelligence Community: Chapter "E: The Director of Central Intelligence" and Chapter "G: Reorganization of the Intelligence Community." What follows is a brief summary of these two chapters and their recommendations, as well as some comments on what we understand to be the current views of the SSCI (Inouye Committee) on the same subjects.

2. Chapter E considers the DCI in his three roles as coordinator of the Intelligence Community, producer of National Intelligence, and head of the CIA.

a. DCI as coordinator: the Committee comments that the DCI is not in a position to command the different departments and agencies concerned with intelligence to respond to the needs of policymakers because he lacks authority to allocate intelligence resources. The Committee supports the CFI concept but wonders if the CFI can be effective--for example, in enabling the DCI to review tactical military intelligence operations--without modification of the peacetime authority of the Secretary of Defense.

b. DCI as producer of National Intelligence: the Committee comments that the DCI faces obstacles in ensuring objectivity in his national intelligence judgments because of "pressures

EXECUTIVE REGISTRY FILE *Succession/DCI*  
*Turner* *EOB*

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from the White House and the Defense Department," and that the DCI's ability to resist such pressures was reduced with the dissolution of the Board of National Estimates. The Committee also emphasizes the importance of ensuring both the DCI's proximity and access to the President and his responsibility for Intelligence Community activities. The Committee notes that the appropriate Congressional committees should be provided with the full range of intelligence produced by the Community, and that procedures should be developed so that the DCI's role as an adviser to the President is not compromised.

c. DCI as head of CIA: the Committee notes that the DCI might find himself in a "conflict of interest" situation when ruling on the activities of the Community because of his direct management responsibility for CIA and, furthermore, that the DCI's "span of control" may be too great for him to exercise, in addition, detailed supervision of the clandestine activities of the CIA.

3. Chapter E also includes several recommendations: namely, that by statute the DCI be given exclusive responsibility for producing National Intelligence, and that he establish a board including senior outside advisers who would review the intelligence product, thereby helping insulate the DCI from pressures to modify his judgments; that the DCI by statute be authorized to establish national intelligence requirements, prepare the intelligence budget, and provide guidance for all national intelligence program operations, and that to do so, the DCI should have authority to review all intelligence resource allocations, including those for tactical military intelligence; that statutory authority for the DCI's two deputies be established, and that only one of the three be an active or retired career military officer; that the oversight committee consider (1) that funds for the national intelligence budget be appropriated to the DCI rather than the different agencies and departments, and (2) that the DCI be separated from direct responsibility over the CIA.

4. Chapter G--"The Reorganization of the Intelligence Community"--expands on the question of separating the DCI from direct management of CIA. Noting that such a separation would remove the DCI from any conflict of interest in exercising his authority over the entire Intelligence Community, the Committee also suggests that major structural changes in CIA be considered: namely, by separating national intelligence production and analysis from "the clandestine service." The Committee lists the

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advantages and potential disadvantages of this latter proposition, and concludes with a recommendation that the appropriate Congressional oversight committees study both questions.

5. We understand that the SSCI (Inouye Committee) continues the concern of the Church Committee regarding the DCI's roles as coordinator of the Community, producer of National Intelligence, and head of CIA. Some impressions gathered by the Intelligence Community Staff and the Office of Legislative Counsel regarding the thinking in the Inouye Committee include:

a. DCI as coordinator, or Community Resource Manager:

Although the Church Committee strongly endorsed this concept, it noted that shaping a committee process which respected the direct executive powers of both the Secretary of Defense and the DCI presented a problem. The Inouye Committee generally favors the CFI and the consolidated NFIP budget process which resulted from E.O. 11905. While the Church Committee recommended founding this process in legislation, the Inouye Committee wishes further testing of the existing process before taking a position on the question of legislation.

In addition, the Inouye Committee is interested in the DCI's power to establish Community collection requirements--already substantial in the imagery and SIGINT fields. Along with the House Appropriations Committee, the Inouye Committee would like to further investigate the question of DCI oversight of tactical military intelligence operations in order to eliminate wasteful duplication.

The Inouye Committee's Charters and Guidelines Subcommittee (Senator Hathaway) is drafting an "overall charter" for the Community and it is possible that proposed legislation could be ready by late spring. Also, the Carter Administration intends to review Community organization through a Policy Review Memorandum (PRM/NSC #11) which will examine the powers of the DCI to manage Community resources either through committee negotiation (as in the CFI's successor organization, the Policy Review Committee/Intelligence) or through direct executive authority, such as the DCI now has over the CIA.

b. DCI as producer of National Intelligence:

Given the fact that there is general agreement that the DCI should be the principal foreign intelligence adviser to the

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President and the NSC, there continues to be controversy both about the quality and objectivity of national intelligence produced under present arrangements and about various measures that could be taken to improve the situation. As noted above, the Church Committee criticized the dissolution of the Board of National Estimates because it believed the Board helped insulate the DCI from policy pressures. The Inouye Committee has not yet taken a position on this subject. We understand that Senator Stevenson's Subcommittee on Intelligence Collection, Production, and Quality is preparing a study for the Committee's consideration on this issue and that it is to be ready at the end of February. This staff preparing the study is pursuing an in-depth investigation of intelligence production in several areas, including Soviet forces for intercontinental conflict--the NIE 11-3/8 series. In this connection, it should be noted that the Inouye Committee as a whole was briefed fully on the controversy surrounding the recent "B-Team" experiment and the false press charges that outside "hard-liners" had succeeded in forcing changes in the judgments of this particular NIE. Because of their positive reactions to these briefings, we believe the Committee members are not now overly concerned about estimative objectivity, but undoubtedly will develop specific recommendations designed to further reinforce the independence of the estimating process and its end product.

The Inouye Committee also is aware, from meetings with former DCI George Bush, that the DCI was considering the formation of a body of outside consultants to be called the Director's Estimates Advisory Panel. This Panel would be composed of experts in various disciplines from the academic, business, and "think-tank" worlds who would be called upon to provide non-Intelligence Community views of selected Estimates. Whether or not to proceed with the formation of such a Panel remains a decision for the new DCI.

c. DCI as head of CIA:

Concerning the Church Committee's recommendation that serious consideration be given to separating the DCI from direct responsibility for managing CIA, the Inouye Committee's Subcommittee on Charters and Guidelines continues to look into the question. Although we do not know what the general view of the Committee currently is, it is probable Committee members must

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first answer a more basic question: in his role as Community leader, how much of the DCI's authority should be directly executive and how much should be expressed through negotiation with other agencies and departments (primarily Defense) which retain executive control of particular national intelligence elements and programs?

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Attachment:  
As stated

Distribution:

Q - Addressee

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**THE DIRECTOR OF CENTRAL INTELLIGENCE**

The 1917 National Security Act gave the DCI responsibility for "coordinating the intelligence activities of the several Government departments and agencies in the interest of national security." In addition, the DCI as the President's principal foreign intelligence adviser was given responsibility for coordinating and producing national intelligence for senior policymakers. However, the Committee found that these DCI responsibilities have often conflicted with the particular interests and prerogatives of the other intelligence community departments and agencies. They have not given up control over their own intelligence operations, and in particular the Department of Defense and the military services, which allocate 80 percent of the direct costs for national intelligence, have insisted that they must exercise direct control over peacetime intelligence activities to prepare for war. Thus, while the DCI was given responsibility under the 1947 act for intelligence community activities, he was not authorized to centrally coordinate or manage the overall operations of the community.

**1. Coordinator of the Intelligence Community**

The Committee has found that the DCI in his coordinator role has been unable to ensure that waste and unnecessary duplication are avoided. Because the DCI only provides guidance for intelligence collection and production, and does not establish requirements, he is not in a position to command the intelligence community to respond to the intelligence needs of national policymakers. Where the DCI has been able to define priorities, he has lacked authority to allocate intelligence resources—either among different systems of intelligence collection or among intelligence collection, analysis and finished intelligence production.

The Committee supports President Ford's objectives of enhancing the stature of the DCI and establishing a mechanism such as the Committee on Foreign Intelligence (CFI) with the DCI as chairman to control the allocation of national intelligence programs resources. The Committee questions, however, whether the CFI can be effective without some appropriate modification of the peacetime authority of the Secretary of Defense. In order to strike an appropriate balance between the requirements of national and tactical intelligence, the intelligence collected by national means should be readily available to the military commanders and vice versa, and the Secretary of Defense and the military services should retain direct control over the operations of tactical military intelligence. Nonetheless, the DCI needs the right to review tactical military intelligence operations in order to make budget choices between tactical and national intelligence activities. Moreover, to carry out his coordinating role, the DCI needs to retain control over major technical intelligence collection systems which service both tactical and national intelligence requirements.

**2. Producer of National Intelligence**

In the area of providing finished intelligence, the Committee discovered that the DCI, in his role as intelligence adviser, has faced obstacles in ensuring that his national intelligence judgments are objective and independent of department and agency biases. The Committee

has been particularly concerned with pressures from both the White House and the Defense Department on the DCI to alter his intelligence judgments. One example of such pressure investigated by the Committee occurred in the fall of 1969 when the DCI modified his judgment on the capability of the Soviet SS-9 system when it conflicted with the public position of Secretary of Defense Laird. After a meeting with staff of the Office of the Secretary of Defense, Director Helms deleted a paragraph from the draft of the National Intelligence Estimate on Soviet strategic forces which stated that within the next five years it was "highly unlikely" that the Soviets would attempt to achieve "a first strike capability, i.e., a capability to launch a surprise attack against the United States with assurance that the U.S.S.R. would not itself receive damage it would regard as unacceptable."

The Committee believes that over the past five years the DCI's ability to produce objective national intelligence and resist outside pressure has been reduced with the dissolution of the independent Board of National Estimates and the subsequent delegation of its staff to the departments with responsibility for drafting the DCI's national intelligence judgments.

In the end, the DCI must depend on his position as the President's principal intelligence adviser or on his personal relationship with the President to carry out his various responsibilities and to withstand pressures to compromise his intelligence judgments. Consequently, the Committee has been concerned that the DCI's proximity and access to the President has diminished over the years. Since 1969, at least until the confirmation of Mr. Bush, the DCI has rarely seen the President except at NSC meetings. The influence a DCI could have from a close relationship with the President has generally been lacking.

While President Ford's Executive Order is a step in the right direction, the Committee believes that the DCI's responsibility over intelligence community activities should be enhanced and spelled out clearly and in detail in statute. The Executive should not continue defining these responsibilities alone as it has done since 1917 through Executive Orders and National Security Council Intelligence Directives (NSCIDs).

The Committee believes that the Congress, in carrying out its responsibilities in the area of national security policy, should have access to the full range of intelligence produced by the United States intelligence community. The Committee further believes that it should be possible to work out a means of ensuring that the DCI's national intelligence judgments are available to the appropriate Congressional committees on a regular basis without compromising the DCI's role as personal adviser to the President.

Finally, the Committee has found concern that the function of the DCI in his roles as intelligence community leader and principal intelligence adviser to the President is inconsistent with his responsibility to manage one of the intelligence community agencies—the CIA. Potential problems exist in a number of areas. Because the DCI as head of the CIA is responsible for human clandestine collection overseas, intelligence of communication overseas, the development

and interception of technical collection systems, there is concern that the DCI as community leader is in "a conflict of interest" situation when ruling on the activities of the overall intelligence community.

The Committee is also concerned that the DCI's new span of control—both the entire intelligence community and the entire CIA—may be too great for him to exercise effective detailed supervision of clandestine activities.

#### Recommendations

16. By statute, the DCI should be established as the President's principal foreign intelligence adviser, with exclusive responsibility for producing national intelligence for the President and the Congress. For this purpose, the DCI should be empowered to establish a staff directly responsible to him to help prepare his national intelligence judgments and to coordinate the views of the other members of the intelligence community. The Committee recommends that the Director establish a board to include senior outside advisers to review intelligence products as necessary, thus helping to insulate the DCI from pressures to alter or modify his national intelligence judgments. To advise and assist the DCI in producing national intelligence, the DCI would also be empowered to draw on other elements of the intelligence community.

17. By statute, the DCI should be given responsibility and authority for establishing national intelligence requirements, preparing the national intelligence budget, and providing guidance for United States national intelligence program operations. In this capacity he should be designated as chairman of the appropriate NSC committee, such as the CFI, and should have the following powers and responsibilities:

a. The DCI should establish national intelligence requirements for the entire intelligence community. He should be empowered to draw on intelligence community representatives and others whom he may designate to assist him in establishing national intelligence requirements and determining the success of the various agencies in fulfilling them. The DCI should provide general guidance to the various intelligence agency directors for the management of intelligence operations.

b. The DCI should have responsibility for preparing the national intelligence program budget for presentation to the President and the Congress.<sup>\*</sup> The definition of what is to be included within that national intelligence program should be established by Congress in consultation with the Executive. In this capacity, the Director of Central Intelligence should be involved early in the budget cycle in preparing the budgets of the respective intelligence community agencies. The Director should have specific responsibility for choosing among the programs of the different collection and production agencies and departments and to insure against waste and unnecessary duplication. The DCI should also have responsibility for issuing fiscal guidance for the allocation of all national intelligence resources. The authority of the

<sup>\*</sup> [The DCI shall:] Ensure the development and submission of a budget for the National Foreign Intelligence Program to the CFI. (Executive Order 11905, Sec. 3(d)(iii).]

DCI to reprogram funds within the intelligence budget should be defined by statute.<sup>19</sup>

c. In order to carry out his national intelligence responsibilities the DCI should have the authority to review all foreign and military intelligence activities and intelligence resource allocations, including tactical military intelligence which is the responsibility of the armed forces.<sup>21</sup>

d. The DCI should be authorized to establish an intelligence community staff to support him in carrying out his managerial responsibilities. This staff should be drawn from the best available talent within and outside the intelligence community.

e. In addition to these provisions concerning DCI control over national intelligence operations in peacetime, the statute should require establishment of a procedure to insure that in time of war the relevant national intelligence operations come under the control of the Secretary of Defense.

18. By statute, the position of Deputy Director of Central Intelligence for the intelligence community should be established as recommended in Executive Order 11905. This Deputy Director should be subject to Senate confirmation and would assume the DCI's intelligence community functions in the DCI's absence. Current provisions regarding the status of the DCI and his single deputy should be extended to cover the DCI and both deputies. Civilian control of the nation's intelligence is important; only one of the three could be a career military officer, active or retired.

19. The Committee recommends that the intelligence oversight committee(s) of Congress consider whether the Congress should appropriate the funds for the national intelligence budget to the DCI, rather than to the directors of the various intelligence agencies and departments.

20. By statute, the Director of Central Intelligence should serve at the pleasure of the President but for no more than ten years.

21. The Committee also recommends consideration of separating the DCI from direct responsibility over the CIA.<sup>22</sup>

#### F. THE CENTRAL INTELLIGENCE AGENCY

##### 1. The Charter for Intelligence Activities: Espionage, Counterintelligence and Covert Action

The Committee finds that the CIA's present charter, embodied in the National Security Act of 1947, the CIA Act of 1949, and the 1974 Hughes-Ryan amendments to the Foreign Assistance Act, is inadequate in a number of respects.

<sup>19</sup> "Reprogramming" means shifting money previously approved for one purpose to another use; for instance, from clandestine human collection to technical collection or covert action.

<sup>21</sup> In contrast to President Nixon's 1971 letter to Director Helms which asked the DCI to plan and review "... all intelligence activities including tactical intelligence and the allocation of all intelligence resources," President Ford's Executive Order 11905 states that "... neither the DCI nor the CFI shall have responsibility for tactical intelligence."

<sup>22</sup> See discussion on pp. 449-450.



executive should continue to have the initiative in formulating covert action, it also strongly believes that the appropriate oversight bodies of Congress should be fully informed prior to the initiation of such actions.

Congressional power over the purse can serve as the most effective congressional oversight tool if there is the courage and the will to exercise it. In addition to the regular budget for covert action, the Agency draws on a Contingency Reserve Fund for unanticipated projects. Any withdrawals from this fund require approval from the Office of Management and Budget and notification, within 48 hours, to the appropriate congressional committees. The Committee believes that the Contingency Fund can also provide one of the mechanisms by which Congress can effectively control covert action.

#### Recommendations

35. The legislation establishing the charter for the Central Intelligence Agency should specify that the CIA is the only U.S. Government agency authorized to conduct covert actions. The purpose of covert actions should be to deal with grave threats to American security. Covert actions should be consistent with publicly-defined United States foreign policy goals, and should be reserved for extraordinary circumstances when no other means will suffice. The legislation governing covert action should require executive branch procedures which will ensure careful and thorough consideration of both the general policies governing covert action and particular covert action projects; such procedures should require the participation and accountability of highest level policymakers.

36. The Committee has already recommended, following its investigation of alleged assassination attempts directed at foreign leaders, a statute to forbid such activities. The Committee reaffirms its support for such a statute and further recommends prohibiting the following covert activities by statute:

- All political assassinations.<sup>29</sup>
- Efforts to subvert democratic governments.
- Support for police or other internal security forces which engage in the systematic violation of human rights.

37. By statute, the appropriate NSC committee (e.g., the Operations Advisory Group) should review every covert action proposal.<sup>30</sup> The Committee recommends that the Operations Advisory Group review include:

- A careful and systematic analysis of the political premises underlying the recommended actions, as well as the nature, extent, purpose, risks, likelihood of success, and costs of the operation. Reasons explaining why the objective can-

<sup>29</sup> The Committee endorses Executive Order 11905, of February 28, 1976, which states: "No employee of the United States Government shall engage in, or conspire to engage in, political assassination."

<sup>30</sup> Executive Order 11905, 2/18/76, established the Operations Advisory Group and directed it to "consider and develop a policy recommendation, including any dissents, for the President prior to his decision on each special activity [e.g., covert operations] in support of national policy."

means should also be considered. Each covert action project should be formally considered at a meeting of the OAG, and if approved, forwarded to the President for final decision. The views and positions of the participants would be fully recorded. For the purpose of OAG, presidential, and congressional considerations, all so-called non-sensitive projects should be aggregated according to the extraordinary circumstances or contingency against which the project is directed.

38. By statute, the intelligence oversight committee(s) of Congress should require that the annual budget submission for covert action programs be specified and detailed as to the activity recommended. Unforeseen covert action projects should be funded from the Contingency Reserve Fund which could be replenished only after the concurrence of the oversight and any other appropriate congressional committees. The congressional intelligence oversight committees should be notified prior to any withdrawal from the Contingency Reserve Fund.

39. By statute, any covert use by the U.S. Government of American citizens as combatants should be preceded by the notification required for all covert actions. The statute should provide that within 60 days of such notification such use shall be terminated unless the Congress has specifically authorized such use. The Congress should be empowered to terminate such use at any time.<sup>31</sup>

40. By statute, the executive branch should be prevented from conducting any covert military assistance program (including the indirect or direct provision of military material, military or logistics advice and training, and funds for mercenaries) without the explicit prior consent of the intelligence oversight committee(s) of Congress.

#### REORGANIZATION OF THE INTELLIGENCE COMMUNITY

##### 1. The Position of the DCI

The Committee recommendations regarding the Director of Central Intelligence (pages 43-45) would, if implemented, increase his authority over the entire intelligence community. Given such increased authority, the Committee believes that both the executive branch and the intelligence oversight committee(s) of Congress should give careful consideration to removing the DCI from direct management responsibility for the Central Intelligence Agency. This would free the DCI to concentrate on his responsibilities with regard to the entire intelligence community and would remove him from any conflict of interest in performing that task. It might also increase the accountability of the Central Intelligence Agency by establishing a new and separate senior position—a Director of the Central Intelligence Agency—responsible for only the CIA.

##### 2. The Structures of the CIA

The Committee believes that several important problems uncovered in the course of this inquiry suggest that serious consideration also be given to major structural change in the CIA—in particular, sepa-

<sup>31</sup> The current provisions of the War Powers Resolution which could be so amended. (Appendix C, Hearings, Vol. 7, p. 226.)

rating national intelligence production and analysis from the clandestine service and other collection functions. Intelligence production could be placed directly under the DCI, while clandestine collection of foreign intelligence from human and technical sources and covert operations would remain in the CIA.

The advantages of such a step are several:

- The DCI would be removed from the conflict of interest situation of managing the intelligence community as a whole while also directing a collection agency.
- The concern that the DCI's national intelligence judgments are compromised by the impulse to justify certain covert action operations or by the close association of the analysts with the clandestine service would be remedied.
- The problem, seen by some in the intelligence community, of bias on the part of CIA analysts toward the collection resources of the CIA would be lessened.
- It would facilitate providing the intelligence production unit with greater priority and increased resources necessary for improving the quality of its finished intelligence.
- Tighter policy control of the Clandestine Service by the National Security Council and the Department of State would be possible.
- The Director would be able to focus increased attention on monitoring Clandestine Services.
- Internal reorganization of the Directorate for Intelligence and the remainder of the CIA could be facilitated.

There are potential drawbacks as well:

- The Director of Central Intelligence might lose the influence that is part of having command responsibility for the clandestine services.
- The increasing, though still not extensive, contact between national intelligence analysts and the Clandestine Service for the purpose of improving the espionage effort might be inhibited.
- The DCI would have managerial responsibility over the former CIA analysts which might place him in a conflict-of-interest situation in regard to the production of intelligence.
- The increased number of independent agencies would increase the DCI's coordination problems.
- If the clandestine services did not report to the DCI, there would be the problem of establishing an alternative chain of command to the President.
- The Clandestine Service might be downgraded and fail to secure adequate support.

Nonetheless, on balance, the Committee believes such a separation of functions and consequent possible realignments in authority within the intelligence community merit serious consideration.

#### Recommendations

11. The Intelligence Oversight committee(s) of Congress in the course of developing a new charter for the intelligence community should give consideration to separating the functions of the DCI and the Director of the CIA and to dividing the intelligence analysis and production functions from the clandestine collection and covert action functions of the present CIA.

#### H. RELATIONS WITH UNITED STATES INSTITUTIONS AND PRIVATE CITIZENS

In the immediate postwar period, as the communists pressed to influence and to control international organizations and movements, mass communications, and cultural institutions, the United States responded by involving American private institutions and individuals in the secret struggle over minds, institutions, and ideals. In the process, the CIA subsidized, and even helped develop "private" or non-government organizations that were designed to compete with communists around the world. The CIA supported not only foreign organizations, but also the international activities of United States student, labor, cultural, and philanthropic organizations.

These covert relationships have attracted public concern and this Committee's attention because of the importance that Americans attach to the independence of these institutions.

The Committee found that in the past the scale and diversity of these covert actions has been extensive. For operational purposes, the CIA has:

- Funded a special program of a major American business association;
- Collaborated with an American trade union federation;
- Helped to establish a research center at a major United States university;
- Supported an international exchange program sponsored by a group of United States universities;
- Made widespread use of philanthropic organizations to fund such covert action programs.

The Committee's concern about these relationships is heightened by the Agency's tendency to move from support to use of both institutions and individuals. For example, the initial purpose of the Agency's funding of the National Student Association was to permit United States students to represent their own ideas, in their own way, in the international forums of the day. Nevertheless, the Committee has found instances in which the CIA moved from general support to the "operational use" of individual students.<sup>22</sup> Contrary to the public's understanding, over 250 United States students were sponsored by the CIA to attend youth festivals in Moscow, Vienna and Helsinki and

<sup>22</sup> Operational use, according to CIA directives, means performing services in support of the CIA Operations Directorate, and may include the recruitment, utilization, or training of any individual for such purposes as providing cover and collecting intelligence.

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MEMORANDUM FOR:

*[Handwritten signature]*

In the attached hearing at page 12  
are the eight questions by Senator Thurmond  
and answers by Mr. Bush which might be of  
interest to Admiral Turner.

*[Handwritten signature]*

Date 15 Feb 1977

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That is a very general answer, sir.

The CHAIRMAN. It has been my observatiton in the case of other nominees who undertook this job that, as a minimum, it takes 12 months of intensive application to get on top of the job, so to speak, to get the feel of it, the many angles and ramifications. These are world-wide as you know, and certainly domestic, too.

Are you willing to put whatever intensive application is necessary into that, in order to get on top of it? Have you thought that out?

Mr. BUSH. I have thought it out. I am committed to it. I hope that my record reveals I am not opposed to hard work. Indeed I have done it since I can remember and I certainly will make that commitment—I have no other plans. My plan is to get in there. There is an awful lot of learning to be done. I have been back here a week and have not had access to much of the classified information even now, and probably that is better until the Senate disposes of this matter one way or another, but I promise you, sir, that I will set an example out there in terms of hours, in terms of hard work, that I think this committee will be proud of. I have done it before and I am prepared to do it again.

The CHAIRMAN. I ask every nominee this question; in simple terms now, boiled down, why do you agree for your name to be submitted and to undertake this job?

Mr. BUSH. I have a—I hope you understand this one. I have a sense of obligation to this country. I am one who is old fashioned in the sense that I think duty and obligation to serve still should be inculcated into every son and every daughter of every father, and I feel strongly about it. My foreign affairs experience has taught me the absolute essentiality of this work and it is for—this reason that I undertake this job—it is no more complicated than that. I did not seek this job. I was riding my bicycle in Peking, coming home from church. A messenger came up and said: "Say, there is news for you back at the office." I went back there, held up this telegram, and it was out of a cold clear blue China sky that this thing descended on me. And I thought about it, not long, thought about it and decided as I think maybe your opening comments confirmed, there is nothing in this politically for me. It is my obligation to my country and I just hope I can convince those who cannot accept that because maybe they do not know that to me that is what motivated me. I think my reply to the President of the United States when I sent it back reflected that.

The CHAIRMAN. You did not volunteer. They volunteered you.

Mr. BUSH. Yes, sir.

The CHAIRMAN. All right.

Senator Thurmond?

Senator THURMOND. Mr. Chairman, I have a few questions that can be answered for the record in order to save time. I am very pleased with the statement Mr. Bush has made here and I suggest that he answer these questions for the record.

Mr. BUSH. Thank you, sir.

RESPONSES BY GEORGE BUSH TO WRITTEN QUESTIONS OF SENATOR STROM THURMOND

Question. Mr. Ambassador, what is your concept of your job as Director of Central Intelligence?

13

Answer. To provide intelligence to the President and the NSC and to coordinate intelligence from the entire intelligence community in addition to providing overall management of the intelligence community.

Question. In providing the national intelligence estimate to the President, do you feel strong differences of opinion should be noted in the final product?

Answer. Yes.

Question. How would you define the charter of the Central Intelligence Agency?

Answer. The CIA was chartered for the purpose of coordinating intelligence activities of several departments and agencies in the interest of national security. Its major responsibilities include correlation, evaluation and dissemination of intelligence relating to the national security to the President, the National Security Council and other government departments and agencies as appropriate. To fulfill these responsibilities the CIA must administer an active program of collection and the DCI must participate in the overall coordination of Intelligence Community collection. It is clearly understood that CIA will have no police, subpoena, law-enforcement powers or internal security functions.

Question. What is your opinion of the role of the National Security Council Intelligence Committee?

Answer. The National Security Council Intelligence Committee should serve as the major communication link between the primary consumers and the producers of intelligence. The NSCIC should provide guidance to the Intelligence Community on consumers' priority needs. In addition, I believe that the NSCIC can perform a valuable function by evaluating the intelligence product. It is this kind of cycle—consumer guidance, consumer feedback—that will lead to a better and more useful intelligence product.

Question. How do you envision your interface with the Secretary of Defense?

Answer. Inasmuch as the Secretary of Defense has overall responsibility for DIA and NSA, as well as the intelligence functions of the various Services, there must be a close relationship. Prime interaction will come through meetings at the NSC. I view the Secretary of Defense both as the manager of significant intelligence resources and as a major consumer in his NSC policy making role; I view the DCI as one who presents objective intelligence to the NSC and to the President.

Question. Can you conceive of any requirement for the CIA to engage in any domestic surveillance?

Answer. No. I believe that any such activity required should be conducted by the Federal Bureau of Investigation or other appropriate law enforcement bodies.

Question. Mr. Ambassador, as one who would report directly to the President, would you be inclined to accept instructions from some agent of the President, such as his staff director or possibly a Secretary of State?

Answer. As DCI, I am responsible to the President and will take his instructions in whatever manner he finds appropriate to communicate them to me. Certainly, on most routine, day-to-day matters, instructions will come through an agent of the President. However, the President has promised me direct access. I will not abuse this access, but I certainly will use it if ever have questions about the propriety of any instruction and to see that the views of the intelligence community are properly presented to the President himself.

Question. What do you envision as the chief problems of your position in view of the recent wide exposure of the CIA's responsibilities and activities?

Answer. While the current Congressional hearings have been a necessary and helpful evaluation in improving the management and oversight of the intelligence community, they have inevitably raised questions abroad about the integrity and reliability of the United States and, in addition, there are morale problems within the intelligence community. I think it is imperative that the country itself backs

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the legitimate activities of the CIA. Management and control of the Agency itself could present major problems at the outset. I will take seriously the Director's responsibility "for protecting intelligence sources and methods from unauthorized disclosure" and likewise working out a proper relationship with Congress is important. All of the problems are important—none appear to be insoluble.

The CHAIRMAN. Senator Symington?

Senator SYMINGTON. Thank you, Mr. Chairman.

Mr. Ambassador. It is an impressive statement you have made. Based on the remarks made already, it would appear as if you were already confirmed. But I would ask a couple of questions, and make a few comments.

First, I believe a strong economy and a sound dollar is just as important to true national security as anything else. Without an economy that is viable, this country could not preserve its system. You would agree, would you not?

Mr. BUSH. Yes, sir.

Senator SYMINGTON. I thought so, based on your record and your extensive experience. I do not know of any man your age who has had more. Now, much of the criticism of the CIA, it is clear to me, is the fault of Congress, not just the CIA. This committee's Subcommittee on Central Intelligence has never really looked into the CIA, which it should, if it wants to assume the obligation.

As perhaps the greatest industrialist I knew once said: "If a man thinks he is being watched, it is about as good as watching him." The Central Intelligence Agency has known for many years that, in effect, it was not really being watched.

I hope you will do in this job what was done by law with respect to the Atomic Energy Act. It was difficult to get any real interest in this committee, for a long time, in the development of nuclear weapons, and difficult in the Foreign Relations Committee to get any real knowledge of the great and growing impact of nuclear weapons. It was like trying to pull teeth.

So I went on the Joint Atomic Energy Committee because under the law it is the obligation of the Atomic Energy Committee to keep the congressional committee fully informed of all developments. There I found out more about atomic weapons in a few weeks than in the previous 20 years, even though I served more than 20 years on this committee. The Backfire bomber and even more the Cruise missile are probably the two most important new items under discussion from the standpoint of the future of your children and my grandchildren: and an independent civilian analysis of these from the CIA could not be more important.

I would hope you would agree that even if not questioned, that you would come before this committee and volunteer anything that you thought was wrong in the way of foreign situations or developments, your own thinking about what would be best for the country. Would you do that?

Mr. BUSH. Senator Symington, I hope that I—I know that my experience in Congress has taught me great respect for it, and I am confident that I could cooperate fully with the proper oversight committees in that regard. And I would.

Senator SYMINGTON. That is not a direct answer, but I would hope—

NATIONAL SECURITY ACT OF 1947,  
as amended <sup>1</sup>

*Note Pages*  
*2-3, 4-5, 9 & 10*

[61 Stat. 495, P.L. 80-253, July 26, 1947, 50 U.S.C. 402, 403;  
63 Stat. 578, P.L. 81-216, August 10, 1949;  
65 Stat. 373, P.L. 82-165, October 10, 1951;  
67 Stat. 19, P.L. 83-15, April 4, 1953;  
68 Stat. 1226, P.L. 83-779, September 3, 1954;  
70A Stat. 679, P.L. 84-1028, August 10, 1956].

50 U.S.C.A. 402 [§101 of Nat. Sec. Act]. National Security Council.

(a) Establishment; presiding officer; functions; composition.

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").<sup>2</sup>

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.<sup>3</sup>

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

- (1) the President;
- (2) the Vice President;<sup>4</sup>
- (3) the Secretary of State;
- (4) the Secretary of Defense;
- (5) . . .;<sup>5</sup>
- (6) . . .;<sup>6</sup> and

(7) The Secretaries and Under Secretaries of other executive departments and of the military departments,<sup>7</sup> . . . ,<sup>8</sup> when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

#### Additional functions

(b) In addition to performing such other functions as the President may direct,<sup>9</sup> for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council<sup>10</sup> - page 9

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

#### Executive secretary; appointment and compensation: staff employees

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President.<sup>11</sup> The executive secretary, subject to the direction of the Council, is authorized, subject to the civil-service laws and the Classification Act of 1949, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

#### Recommendations and reports

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

50 U.S.C.A. 403 [§102 of Nat. Sec. Act]. Central Intelligence Agency—Establishment; Director; appointment.

(a) There is established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence



who shall be the head thereof<sup>12</sup> and with a Deputy Director of Central Intelligence<sup>13</sup> who shall act for, and exercise the powers of, the Director during his absence or disability.<sup>14</sup> The Director<sup>15</sup> and the Deputy Director<sup>16</sup> shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services, whether in an active or retired status, or from among individuals in civilian life: *Provided, however,* That at no time shall the two positions of the Director and Deputy Director be occupied simultaneously by commissioned officers of the armed services, whether in an active or retired status.<sup>17</sup>

**Commissioned officer as Director or Deputy Director; powers and limitations, effect on commissioned status**

(b)(1) If a commissioned officer of the armed services is appointed as Director, or Deputy Director, then—

(A) in the performance of his duties as Director, or Deputy Director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the Department of the Army, the Department of the Navy, the Department of the Air Force, or the armed services or any component thereof; and

(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director, or Deputy Director) with respect to the armed services or any component thereof, the Department of the Army, the Department of the Navy, or the Department of the Air Force, or any branch, bureau, unit, or division thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in paragraph (1) of this subsection, the appointment to the office of Director, or Deputy Director, of a commissioned officer of the armed services, and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed services, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such

commissioned officer shall, while serving in the office of Director, or Deputy Director, continue to hold rank and grade not lower than that in which serving at the time of his appointment and to receive the military pay and allowances (active or retired, as the case may be, including personal money allowance) payable to a commissioned officer of his grade and length of service for which the appropriate department shall be reimbursed from any funds available to defray the expenses of the Central Intelligence Agency. He also shall be paid by the Central Intelligence Agency from such funds an annual compensation at a rate equal to the amount by which the compensation established for such position exceeds the amount of his annual military pay and allowances.<sup>18</sup>

(3) The rank or grade of any such commissioned officer shall, during the period in which such commissioned officer occupies the office of Director of Central Intelligence, or Deputy Director of Central Intelligence, be in addition to the numbers and percentages otherwise authorized and appropriated for the armed service of which he is a member.<sup>19</sup>

**Termination of employment of officers and employees;  
effect on right of subsequent employment**

(c) Notwithstanding the provisions of section 652 [now § 7501]<sup>20</sup> of Title 5, or the provisions of any other law,<sup>21</sup> the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States,<sup>22</sup> but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission.

**Powers and duties**

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—<sup>23</sup>

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities; *Provided*, That the Agency shall have no police, subpoena, law-enforcement powers,<sup>24</sup> or internal-security functions: *Provided, further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

#### Inspection of intelligence of other departments

(c) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination: *Provided, however*, That upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

Termination of National Intelligence Authority; transfer of  
personnel, property, records, and unexpended funds

(f) Effective when the Director first appointed under subsection  
(a) of this section has taken office—

(1) the National Intelligence Authority (11 Fed. Reg. 1337, 1339,  
February 5, 1946)<sup>25</sup> shall cease to exist;<sup>26</sup> and

(2) the personnel, property, and records of the Central Intelligence Group are transferred to the Central Intelligence Agency, and such Group shall cease to exist.<sup>27</sup> Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available for such Group shall be available and shall be authorized to be made available in like manner for expenditure by the Agency.

50 U.S.C.A. 405[f 303 of Nat. Sec. Act]. Advisory Committees; appointment; compensation of part-time personnel; applicability of other laws.

(a) The . . . ,<sup>28</sup> Director of Central Intelligence, and the National Security Council,<sup>29</sup> acting through its Executive Secretary, are authorized to appoint such advisory committees and to employ, consistent with other provisions of this Act, such part-time advisory personnel as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$50<sup>30</sup> for each day of service, as determined by the appointing authority.

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder, shall not be considered as service bringing such individual within the provisions of sections 281 [now 203], 283 [now 205], or 284 [now 207] of Title 18,<sup>31</sup> unless the act of such individual, which by such sections is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department or agency

which such person is advising or in which such department or agency is directly interested.

§ 310 [of Nat. Sec. Act].<sup>32</sup>—Effective Date.

(a) The first sentence of section 202(a) and sections 1, 2, 307, 309, and 310 shall take effect immediately upon the enactment of this Act.

(b) Except as provided in subsection (a), the provisions of this Act shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act.<sup>33</sup>

<sup>1</sup> Legislative history materials include:

Sen. Rep. No. 80-239 (Committee on Armed Services), June 5, 1947;  
H.R. Rep. No. 80-961 (Committee on Armed Services), July 16, 1947;  
H.R. Rep. No. 80-1051 (Conference Report), July 24, 1947.

<sup>2</sup> The National Security Council, together with its "functions, records, property, personnel, and unexpended balances of appropriations, allocations, and other funds (available or to be made available)," was transferred to the Executive Office of the President by Reorganization Plan No. 4 of 1949 (63 Stat. 1067, 5 U.S.C.A., App., p. 222).

<sup>3</sup> Historically, the Director of Central Intelligence has attended Council meetings and serves as the Council's intelligence advisor. Subsection 3(d)(1) of Executive Order 11905 (41 F.R. 7703, February 19, 1976) provides that the Director "shall be responsible directly to the National Security Council and the President" and is to act "as the President's primary advisor on foreign intelligence."

<sup>4</sup> The Council, as composed by the Act of 1947, did not include the Vice President. The Vice President was designated a member by the National Security Act Amendments of 1949 (P.L. 81-216).

<sup>5</sup> The omitted words are "the Director of Mutual Security," a position which did not exist when the Act was enacted in 1947. The position was established, and its incumbent made a member of the Council, under the

provisions of the Mutual Security Act of 1951 (P.L. 82-165). The office of the Director for Mutual Security was abolished and the functions of the Director as a member of the Council transferred to the Director of the Foreign Operations Administration by Reorganization Plan No. 7 of the 1953 (67 Stat. 639). The office of the Director of the Foreign Operations Administration and the membership of the Director on the National Security Council were abolished by Executive Order 10610 (3 CFR, 1954-1958 Comp., p. 250).

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<sup>6</sup> The omitted words are "the Chairman of the National Security Resources Board;" the Chairman was a member of the Council under the provisions of the 1947 Act. The functions of the Chairman as a member of the Council were transferred to the Director of the Office of Defense Mobilization by Reorganization Plan No. 3 of 1953 (67 Stat. 634, 5 U.S.C.A., App., p. 295). The Office of Defense Mobilization was consolidated into the Office of Defense and Civilian Mobilization by Reorganization Plan No. 1 of 1958 (72 Stat. 1799, 5 U.S.C.A., App., p. 336), and redesignated the "Office of Civil and Defense Mobilization" by P.L. 85-763 (72 Stat. 861, August 26, 1958), as the "Office of Emergency Planning" by P.L. 87-296 (75 Stat. 630, September 22, 1961), and as the "Office of Emergency Preparedness" by P.L. 90-608 (82 Stat. 1190, October 21, 1968). The Office of Emergency Preparedness, and the office of Director of the Office of Emergency Preparedness, as well as the functions of the Director "with respect to being a member of the National Security Council," were abolished by Reorganization Plan No. 1 of the 1973 (5 U.S.C.A., App., p. 73).

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<sup>7</sup> The Secretaries of the Army, Navy and Air Force also were members, under the 1947 Act. Their memberships were abolished by the National Security Act Amendments of 1949 (P.L. 81-216).

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<sup>8</sup> The omitted words are "the Chairman of the Munitions Board and the Chairman of the Research and Development Board." Under the 1947 Act, the President was authorized to designate those Chairmen, and certain other officials, as members of the Council, "but no such additional member shall be designated until the advice and consent of the Senate has been given to his appointment to the office the holding of which authorizes his designation as a member of the Council." Both of these offices were abolished and the functions of both Boards transferred to the Secretary

of Defense, by Reorganization Plan No. 6 of 1953 (67 Stat. 638, 5 U.S.C.A., App., p. 304). The 1947 Act also authorized the designation of "the Secretaries of the executive departments," subject to the same Senate confirmation requirements. That provision was amended to the current language by the National Security Act Amendments of 1949 (P.L. 81-216).

<sup>9</sup> Functions assigned to the Council by Executive Order include:

- a. Certain functions with respect to the National Security Medal (E.O. 10431 (1953), *Guide*, p. 61);
- b. Certain monitoring and other functions with respect to the executive branch program of security standards for government employment and for access to classified information (E.O. 10450 (1953), *Guide*, p. 161);
- c. Certain functions with respect to maintaining channels of communication with former Presidents (E.O. 11456 (1969), *Guide*, p. 175);
- d. Certain supervisory and other functions with respect to the classification and protection of national security information (E.O. 11652 (1972)); and
- e. Certain authorizing, supervisory and other functions with respect to United States foreign intelligence activities (E.O. 11905 (1976)).

<sup>10</sup> In addition to the duties and functions of the Council prescribed by subsections 402(a) and (b), see also subsections 402(d) and 403(d) and (e). Executive Order 11905 assigns additional functions to the National Security Council, principally to "provide guidance and direction to the development and formulation of national intelligence activities" and to "conduct a semi-annual review of intelligence policies and of ongoing special activities in support of national Foreign policy objectives" (subsection 3(a)).

<sup>11</sup> In the 1947 Act the following language was included at the end of the sentence: "and who shall receive compensation at the rate of \$10,000 a year." That language is omitted from section 402 of Title 50 of the Code "since the position referred to is now in the classified civil service and subject to the applicable compensation schedules." (See Codification Note following subsection 402(d) of Title 50.) Under P.L. 90-222 (81 Stat.

*Replaces  
duties of  
NSCIC.*

December 1976

726, 3 U.S.C.A. 105) the President is authorized to fix the compensation of the Executive Secretary of the National Security Council at a rate "of compensation not to exceed that of level II of the Federal Executive Salary Schedule." For the rate set for level II see Federal Executive Salary Act of 1964 at page 173 of the *Guide*.

<sup>12</sup> The Director is also the "President's primary advisor on foreign intelligence" (subsection 3(d) of Executive Order 11905), with interagency authorities and responsibilities prescribed primarily by subsections 102(d) and (e) of the National Security Act and by Executive Order 11905.

<sup>13</sup> The Act of 1947 did not include the position of Deputy Director and for several years there was no "provision of law establishing a Deputy Director with statutory authority to act for the Director or to perform such functions as the Director may assign to him" (H.R. Rep. No. 83-219, March 30, 1953). The existence of the position was given statutory recognition by the enactment of the Executive Pay Act of 1949 (63 Stat. 880, P.L. 81-359, October 15, 1949), which prescribed compensation for the position. The position of Deputy Director was created by an amendment of 1953 to subsection 102(a) (67 Stat. 19, P.L. 82-15, April 4, 1953), thereby enhancing the authority and standing of the position and its incumbent. The statute also served to put to rest any contention that the statutory acknowledgement of the position in the Executive Pay Act of 1949 converted the position to an appointive office to which a commissioned officer could not be appointed in view of the statutory prohibitions against the appointment of such officers to appointive offices (now 10 U.S.C.A. 973). The 1953 amendment also amended subsection 102(b) to render that subsection applicable to the Deputy Director, as well as to the Director.

<sup>14</sup> In addition to the authority to "act for, and exercise the powers of the Director during his absence or disability," it is considered "inherent in the statutory position of the Deputy Director that the holder will assist the Director in the performance of his duties, including those vested by law in the Director" (41 Comp. Gen. 429 (1962), *Guide*, p. 209). The President has directed that the Director "shall, to the extent consistent with his statutory responsibilities, delegate the day-to-day operation of the Central Intelligence Agency to the Deputy Director of Central Intelligence" (Executive Order 11905, subsection 3(d)(3)).



<sup>15</sup> The following men have been appointed Director under the authority of the Act, and served in that capacity for the periods indicated:

Rear Admiral Roscoe Henry Hillenkoeter, USN

September 26, 1947-October 7, 1950

Lieutenant General (later General) Walter Bedell Smith, USA

October 7, 1950-February 9, 1953

Allen Welsh Dulles

February 26, 1953-November 19, 1961

John Alex McCone

November 19, 1961-April 28, 1965

Vice Admiral William Francis Raborn, Jr., USN (Retired)

April 28, 1965-June 30, 1966

Richard Helms

June 30, 1966-February 2, 1973

James R. Schlesinger

February 2, 1973-July 2, 1973

William E. Colby

September 4, 1973-January 30, 1976

George Bush

January 30, 1976-

Admiral Hillenkoetter took office on September 26, 1947, under a recess appointment. He was nominated by the President on November 24 and confirmed by the Senate on December 8, 1947. Admiral Hillenkoetter also had been appointed Director of Central Intelligence, and had served in that capacity from May 1, 1947, to September 26, 1947, under the authority of the President's Directive of January 22, 1946 (footnote 24), which established that Office, as well as the National Intelligence Authority and the Central Intelligence Group. Mr. Dulles also served as Acting Director from February 9 to February 26, 1953.

<sup>16</sup> The following men have been appointed Deputy Director of Central Intelligence under the authority of section 102(a) of the Act, as amended, and served in that capacity for the periods indicated:

Lieutenant General (later General) Charles Pearre Cabell, USAF

April 23, 1953-January 31, 1962

Lieutenant General Marshall Sylvester Carter, USA

April 3, 1962-April 28, 1965

Richard Helms

April 28, 1965-June 30, 1966

Vice Admiral Rufus Lackland Taylor, USN  
October 13, 1966-January 31, 1969  
Lieutenant General Robert Everton Cushman, Jr., USMC  
May 7, 1969-December 31, 1971  
General Vernon A. Walters  
May 2, 1972-July 2, 1976  
E. Henry Knoche  
July 2, 1976-

Also appointed and serving as Deputy Director under the Act during the period when that office was not a position established by statute (September 18, 1947, to April 4, 1953) were:

Brigadier General Edwin Kennedy Wright, USA  
September 26, 1947-March 9, 1949  
William Harding Jackson  
October 7, 1950-August 3, 1951  
Allen Welsh Dulles  
August 23, 1951-February 26, 1953.

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<sup>17</sup> The proviso was added to the subsection by the 1953 amendment which created the position of Deputy Director (P.L. 83-15).

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<sup>18</sup> See Footnotes 2 and 3 to the Federal Executive Pay Act of 1964 (*Guide*, p. 173) as to the rates of "compensation established for" the positions of Director and Deputy Director of Central Intelligence.

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<sup>19</sup> Paragraph 3 was added to the subsection by the 1953 amendment which created the position of Deputy Director (P.L. 83-15). Existing law (now 10 U.S.C.A. 3202, 5231, 8202) imposed restrictions on the total number of general and flag officers allowed for active duty.

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<sup>20</sup> Section 7501 authorizes the removal or suspension of any individual in the competitive service "only for such causes as will promote the efficiency of the service," and prescribes procedures for such actions. Since CIA employers are excluded from the competitive service by the CIA Act of 1949, the enactment of that statute, in 1949, subsequent to the enactment of the National Security Act, in effect obsolesced the reference to section 7501.

<sup>21</sup> A 1942 decision of the Comptroller General interpreted the term "notwithstanding the provisions of any other law" as used in another national defense statute (the Lend-Lease statute of 1941). It was held that Congress "intended that only those laws should be suspended, waived, or disregarded whose provisions otherwise might prohibit or unduly interfere with the carrying out of the purpose intended to be accomplished by" the Lend-Lease act (22 Comp. Gen. 400). But see *Philippi v. Central Intelligence Agency* (U.S. Court of Appeals for the District of Columbia, No. 76-1004, November 16, 1976), a case brought under the Freedom of Information Act, in which a dissenting judge was of the opinion that section 6 of the CIA Act exempting this Agency from the provisions of any other law requiring disclosure means "the entire law."

A somewhat different problem was involved in a decision of a Federal District court in 1947. Certain war powers statutes conferred authority to control commodities, and established both civil liabilities and criminal penalties. A subsequent statute, the Sugar Control Act of 1947, provided for the control of sugar and provided also that there would be no civil liability or criminal penalty for violations of that Act. The Act also prescribed that the earlier war powers statutes were to continue in effect "notwithstanding any other provision of law." The court held that the suspension of sugar allocations, pursuant to the earlier war powers statutes, was neither a civil liability nor a criminal penalty and was retained by the 1947 Sugar Control Act.

<sup>22</sup> A similar, but not identical, authority to terminate the employment of National Security Agency personnel is provided by subsection 833(a) of Title 50:

(a) Notwithstanding section 863 [now 3315(b), 7701, 7512(a)(b)] of Title 5, section 22-1 [now 3571, 5594, 7312, 7501(c), 7512(c), 7532] of Title 5, or any other provision of law, the Secretary [of Defense] may terminate the employment of any officer or employee of the Agency whenever he considers that action to be in the interest of the United States, and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of that officer or employee cannot be invoked consistently with the national security. Such a determination is final.

In addition, subsection 833(c), authorizes the delegation of the authority vested in the Secretary by subsection 833(a), but only to "the Deputy Secretaries of Defense and the Director of the National Security Agency."

<sup>23</sup> This section is implemented from time to time by the issuance of National Security Council Intelligence Directives. Other authorities and responsibilities are conferred on the Agency and the Director of Central Intelligence by other statutes and executive orders (Footnote 9), primarily by Executive Order 11905. See also 42 U.S.C.A. 2162, at page 165 of the *Guide*, authorizing certain joint action by the Director and the Administrator of the Energy Research and Development Administration with respect to Restricted Data, in implementation of subsection 403(d).

<sup>24</sup> See also section 508 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, prohibiting the Law Enforcement Assistance Administration from using the services, equipment, personnel and facilities of the Agency (*Guide*, p. 185). In addition, section 5 of Executive Order 11905 imposes certain restrictions on the activities of the Agency and other intelligence agencies.

<sup>25</sup> The Federal Register citation is to the President's Directive of January 22, 1946 (3 CFR, 1943-1948 Comp., p. 1080), establishing the National Intelligence Authority and the Central Intelligence Group. That Directive has striking similarities to subsections 403(d) and (e):

PRESIDENTIAL DIRECTIVE OF  
JANUARY 22, 1946  
Coordination of Federal Foreign Intelligence Activities

The White House,  
Washington, January 22, 1946.

To the Secretary of State, The Secretary of War, and The Secretary of the Navy.

1. It is my desire, and I hereby direct, that all Federal foreign intelligence activities be planned, developed and coordinated so as to assure the most effective accomplishment of the intelligence mission related to the national security. I hereby designate you, together with another person to be named by me as my personal representative, as the National Intelligence Authority to accomplish this purpose.

2. Within the limits of available appropriations, you shall each from time to time assign persons and facilities from your respective Departments, which persons shall collectively form a Central Intelligence Group

and shall, under the direction of a Director of Central Intelligence, assist the National Intelligence Authority. The Director of Central Intelligence shall be designated by me, shall be responsible to the National Intelligence Authority, and shall sit as a non-voting member thereof.

3. Subject to the existing law, and to the direction and control of the National Intelligence Authority, the Director of Central Intelligence shall:

a. Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national policy intelligence. In so doing, full use shall be made of the staff and facilities of the intelligence agencies of your Departments.

b. Plan for the coordination of such of the activities of the intelligence agencies of your Departments as relate to the national security and recommend to the National Intelligence Authority the establishment of such overall policies and objectives as will assure the most effective accomplishment of the national intelligence mission.

c. Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.

d. Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct.

4. No police, law enforcement or internal security functions shall be exercised under this directive.

5. Such intelligence received by the intelligence agencies of your Departments as may be designated by the National Intelligence Authority shall be freely available to the Director of Central Intelligence for correlation, evaluation or dissemination. To the extent approved by the National Intelligence Authority, the operations of said intelligence agencies shall be open to inspection by the Director of Central Intelligence in connection with planning functions.

6. The existing intelligence agencies of your Departments shall continue to collect, evaluate, correlate and disseminate departmental intelligence.

7. The Director of Central Intelligence shall be advised by an Intelligence Advisory Board consisting of the heads (or their representatives) of the principal military and civilian intelligence agencies of the Govern-

ment having functions related to national security, as determined by the National Intelligence Authority.

8. Within the scope of existing law and Presidential directives, other departments and agencies of the executive branch of the Federal Government shall furnish such intelligence information relating to the national security as is in their possession, and as the Director of Central Intelligence may from time to time request pursuant to regulations of the National Intelligence Authority.

9. Nothing herein shall be construed to authorize the making of investigations inside the continental limits of the United States and its possessions, except as provided by law and Presidential directives.

10. In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods.

Sincerely yours,

HARRY S. TRUMAN

<sup>26</sup> The first Director appointed under subsection 402(a) took office as of September 26, 1947, and the National Intelligence Authority therefore ceased to exist as of that date.

<sup>27</sup> The first Director appointed under subsection 402(a) took office as of September 26, 1947. As prescribed by subsection 403(f), the CIG therefore ceased to exist, and its personnel, property and records transferred to CIA, as of that date. The Office of Strategic Services, a military unit during World War II generally considered a forbear of CIA, was not in fact a legal predecessor to CIA. OSS was created by a Military Order of June 13, 1942 (3 CFR, 1938-1943, Comp. p. 1308):

MILITARY ORDER OF JUNE 13, 1942  
Office of Strategic Services

By virtue of the authority vested in me as President of the United States and as Commander-in-Chief of the Army and Navy of the United States, it is ordered as follows:

1. The office of Coordinator of Information established by Order of July 11, 1941, exclusive of the foreign information activities transferred

to the Office of War Information by Executive Order of June 13, 1942, shall hereafter be known as the Office of Strategic Services, and is hereby transferred to the jurisdiction of the United States Joint Chiefs of Staff.

2. The Office of Strategic Services shall perform the following duties:

a. Collect and analyze such strategic information as may be required by the United States Joint Chiefs of Staff.

b. Plan and operate such special services as may be directed by the United States Joint Chiefs of Staff.

3. At the head of the Office of Strategic Services shall be a Director of Strategic Services who shall be appointed by the President and who shall perform his duties under the direction and supervision of the United States Joint Chiefs of Staff.

4. William J. Donovan is hereby appointed as Director of Strategic Services.

5. The Order of July 11, 1941 is hereby revoked.

FRANKLIN D. ROOSEVELT  
Commander-in-Chief

THE WHITE HOUSE,  
June 13, 1942.

OSS was terminated as of October 1, 1945, by Executive Order 9621 (3 CFR, 1943-1948 Comp., p. 431), and its functions, personnel, property, records and funds transferred to the State and War (now Army) Departments. The Order permitted the termination or discontinuance of transferred functions and directed that all affairs relating to discontinued activities be wound up. By memoranda of 26 and 27 September 1945, Assistant Secretary of War John J. McCloy and Secretary of War Robert B. Peterson created the Strategic Services Unit, with Brigadier General John Magruder as its head, to "exercise, administer and operate (with power of delegation and successive redelegation where appropriate) the functions, personnel, records and property which have been or will be transferred to the War Department and the Secretary of War under" Executive Order 9621.

<sup>28</sup> The omitted words are "Director of the Office of Emergency Preparedness." That Office was abolished by Reorganization Plan No. 1 of 1973 (5 U.S.C.A. App., p. 73).

<sup>29</sup> The subsection, as enacted in 1947, did not apply to the National Security Council. The Council was included in the subsection by the National Security Act Amendments of 1949 (P.L. 81-216).

As enacted in 1947, the subsection conferred authority also on the Secretary of Defense and the Chairman of the National Security Resources Board. The subsection was repealed in 1956, as to the Secretary of Defense, by P.L. 80-1028 (70A Stat. 641), but that statute conferred similar authority on the Secretary (10 U.S.C.A. 173). See Footnote 6 as to the abolition of the National Security Resources Board.

<sup>30</sup> The 1947 Act authorized compensation "not to exceed \$35." The amount was increased to \$50 by the National Security Act Amendments of 1949 (P.L. 81-216).

<sup>31</sup> Section 203 prohibits bribes and similar activities and sections 205 and 207 prohibit activities by government employees and former employees which are inconsistent with their duties as government employees. By regulation, the Civil Service Commission requires employees of the government, including officers and employees "retained, designated, appointed or employed to perform with or without compensation, but not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis," to submit statements of employment and financial interests. But such employees are exempt from the reporting requirement if they are specialists "appointed for intermittent confidential intelligence consultation of brief duration" (5 CFR 735.412).

<sup>32</sup> With the exception of section 310, the provisions of the National Security Act set out in the Guide are the provisions as codified in Title 50 of the United States Code, specifically sections 402, 403, and 405 of Title 50. Section 310 of the Act is not codified and therefore is quoted from the Act.

<sup>33</sup> Sections 402, 403 and 405 of Title 50 of the Code became effective under subsection (b) of section 310, as did those provisions of the Act which established the National Military Establishment (redesignated the "Department of Defense" by the National Security Act Amendments of 1949), the Office of the Secretary of Defense and the Department of the



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Air Force and redesignated the War Department as the "Department of the Army." The National Security Act was enacted July 26, 1947, and James V. Forrestal took office as the first Secretary of Defense on September 17, 1947. The effective date of those provisions therefore was September 18, 1947, and the Central Intelligence Agency was established as of that date.

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CENTRAL INTELLIGENCE AGENCY ACT OF 1949,  
as amended

(63 Stat. 208, P.L. 81-110, June 20, 1949;<sup>1</sup>  
64 Stat. 450, P.L. 81-697, August 16, 1950;  
65 Stat. 89, P.L. 82-53, June 26, 1951;  
68 Stat. 1105, P.L. 83-763, September 1, 1954;  
72 Stat. 327, P.L. 85-507, July 7, 1958;  
74 Stat. 792, P.L. 86-707, September 6, 1960;  
78 Stat. 484, P.L. 88-448, August 19, 1964)

AN ACT

To provide for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

DEFINITIONS

SECTION 1. When used in sections 403b-403j of this title,<sup>2</sup> the term—

- (a) "Agency" means the Central Intelligence Agency;
- (b) "Director" means the Director of Central Intelligence;
- (c) "Government agency" means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.<sup>3</sup>

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U.S.C.A.  
403a.

SEAL OF OFFICE

SEC. 2. The Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve,<sup>4</sup> and judicial notice shall be taken thereof.

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U.S.C.A.  
403b.

PROCUREMENT AUTHORITIES

SEC. 3. (a) In the performance of its functions the Central Intelligence Agency is authorized to exercise the authorities contained in sections [2(c)(1), (2), (3), (4), (5), (6), (10), (12), (15), (17)],<sup>5</sup> and sections 3, 4, 5, 6, and 10<sup>6</sup> of the Armed Services

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403c.

Procurement Act of 1947 (Public Law 413, Eightieth Congress, second session)].<sup>7</sup>

(b) In the exercise of the authorities granted in subsection (a) of this section, the term "Agency head" shall mean the Director, the Deputy Director, or the Executive of the Agency.<sup>8</sup>

(c) The determinations and decisions provided in subsection (a) of this section to be made by the Agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as provided in subsection (d) of this section, the Agency head is authorized to delegate his powers provided in this section, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the Agency.<sup>9</sup>

(d) The power of the Agency head to make the determinations or decisions specified in [paragraphs (12) and (15) of section 2 (c) and section 5 (a) of the Armed Services Procurement Act of 1947]<sup>10</sup> shall not be delegable. Each determination or decision required by [paragraphs (12) and (15) of section 2 (c), by section 4 or by section 5 (a) of the Armed Services Procurement Act of 1947],<sup>11</sup> shall be based upon written findings made by the official making such determinations, which findings shall be final and shall be available within the Agency for a period of at least six years following the date of the determination.

#### TRAVEL, ALLOWANCES, AND RELATED EXPENSES

<sup>50</sup>  
U.S.C.A.  
403e. SEC. 4.<sup>12</sup> Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned to duty stations<sup>13</sup> outside the several states of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia,<sup>14</sup> shall—

(1) (A) pay the travel<sup>15</sup> expenses of officers and employees of the Agency, including expenses incurred while traveling pursuant to authorized<sup>16</sup> home leave;

(B) pay the travel expenses of members of the family of an officer or employee of the Agency when proceeding to or returning from his post of duty; accompanying him on authorized home leave; or otherwise traveling in accordance with authority granted pursuant to the terms of sections 403a-403j<sup>17</sup> of this title or any other Act;

(C) pay the cost of transporting the furniture and household and personal effects of an officer or employee of the Agency to his successive posts of duty and, on the termination of his services, to his

residence at time of appointment or to a point not more distant, or, upon retirement, to the place where he will reside;

(D) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects<sup>18</sup> of an officer or employee of the Agency, when he is absent from his post of assignment under orders, or when he is assigned to a post to which he cannot take or at which he is unable to use such furniture and household and personal effects, or when it is in the public interest or more economical to authorize storage; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations,<sup>19</sup> when not otherwise fixed by law;<sup>20</sup>

(E) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Agency in connection with assignment or transfer to a new post, from the date of his departure from his last post or from the date of his departure from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of residence quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Agency, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations,<sup>21</sup> when not otherwise fixed by law;<sup>22</sup>

(F) pay the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Agency and his furniture and household and personal effects, including automobiles, from a post at which, because of the prevalence of disturbed conditions, there is imminent danger to life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the ap-

appropriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders, notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3) (A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each officer or employee of the Agency who was a resident of the United States (as described above) at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter.<sup>23</sup>

(B) While in the United States (as described in paragraph (3) (A) of this section) on leave, the service of any officer or employee shall be available for work or duties in the Agency or elsewhere as the Director may prescribe; and the time of such work or duty shall not be counted as leave.<sup>24</sup>

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3) (A) of this section), leave of absence granted shall be exclusive of the time actually and necessarily occupied in going to and from the United States (as so described) and such time as may be necessarily occupied in awaiting transportation.<sup>25</sup>

(4) Notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Agency, a privately owned motor vehicle in any case in which it shall be determined that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, and pay the costs of such transportation. Not more than one motor vehicle of any officer or employee of the Agency may be transported under authority of this paragraph during any four-year period, except that, as a replacement for such motor vehicle, one additional motor vehicle of any such officer or employee may be so transported during such period upon approval, in advance, by the Director and upon a determination, in advance, by the Director that such replacement is necessary for reasons beyond the control of the officer or employee and is in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this paragraph of a privately owned motor vehicle of any officer or employee

who has remained in continuous service outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Director in accordance with this paragraph.<sup>26</sup>

(5) (A) In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means he shall deem appropriate and without regard to the Standardized Government Travel Regulations and section 73b [now section 5731 (a)] of Title 5,<sup>27</sup> to the nearest locality where a suitable hospital or clinic exists and on his recovery pay for the travel expenses of his return to his post of duty. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant;

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in his opinion, sufficient personnel is employed to warrant such a station: *Provided*, That, in his opinion, it is not feasible to utilize an existing facility;

(C) In the event of illness or injury requiring hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic;

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculations or vaccinations to such officers or employees.

(6) Pay the costs of preparing and transporting the remains of an officer or employee of the Agency or a member of his family who may die while in travel status or abroad, to his home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.

(7) Pay the costs of travel of new appointees and their dependents, and the transportation of their household goods and personal effects, from places of actual residence in foreign countries at time

of appointment to places of employment and return to their actual residences at the time of appointment or a point not more distant: *Provided*, That such appointees agree in writing to remain with the United States Government for a period of not less than twelve months from the time of appointment.

Violation of such agreement for personal convenience of an employee or because of separation for misconduct will bar such return payments and, if determined by the Director or his designee to be in the best interests of the United States, any money expended by the United States on account of such travel and transportation shall be considered as a debt due by the individual concerned to the United States.<sup>28</sup>

#### GENERAL AUTHORITIES

SEC. 5. In the performance of its functions, the Central Intelligence Agency is authorized to <sup>29</sup>—

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget,<sup>30</sup> for the performance of any of the functions or activities authorized under sections 403 and 405 of this title,<sup>31</sup> and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a-403j of this title<sup>32</sup> without regard to limitations of appropriations from which transferred;

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U.S.C.A.  
403f.

(b) Exchange funds without regard to section 543 of Title 31,<sup>33</sup>

(c) Reimburse other Government agencies for services of personnel assigned to the Agency, and such other Government agencies are authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or employee for duty with the Agency;

(d) Authorize couriers and guards designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security;

(e) Make alterations, improvements, and repairs on premises rented by the Agency, and pay rent therefor without regard to limitations on expenditures contained in the Act of June 30, 1932, as amended;<sup>34</sup> *Provided*, That in each case the Director shall certify that exception from such limitations is necessary to the successful

performance of the Agency's functions or to the security of its activities.<sup>36</sup>

<sup>50</sup>  
U.S.C.A.  
403g.

SEC. 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title<sup>36</sup> that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5,<sup>37</sup> and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5.<sup>38</sup>

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U.S.C.A.  
403h.

SEC. 7. Whenever the Director, the Attorney General, and the Commissioner of Immigration shall determine that the entry of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be given entry into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations,<sup>39</sup> or to the failure to comply with such laws and regulations pertaining to admissibility: *Provided*, That the number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.<sup>40</sup>

#### APPROPRIATIONS

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403j.

SEC. 8. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions,<sup>41</sup> including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service programs as authorized by section 150 [now section 7901] of Title 5;<sup>42</sup> rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-send-



ing equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment, where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of section 14 of Title 6;<sup>43</sup> payment of claims pursuant to Title 28; acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to sections 259 and 267 of Title 40;<sup>44</sup> repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.<sup>45</sup>

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds;<sup>46</sup> and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director<sup>47</sup> and every such certificate shall be deemed a sufficient voucher for the amount therein certified.<sup>48</sup>

#### SEPARABILITY OF PROVISIONS

SEC. 9.<sup>49</sup> If any provision of this Act, or the application of such provision to any person or circumstances, is held invalid, the

remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SHORT TITLE

SEC. 10. This Act may be cited as the "Central Intelligence Agency Act of 1949."

Approved June 20, 1949.

Central Intelligence Agency Act Footnotes

<sup>1</sup> Legislative history materials include:

H.R. Rep. No. 160, 81st Cong., 1st Sess., February 24, 1949; and  
Sen. Rep. No. 106, 81st Cong., 1st Sess., March 10, 1949.

<sup>2</sup> These sections of Title 50 are the Central Intelligence Agency Act.

<sup>3</sup> The 1949 Act also included a section 1(d): "Continental United States" means the States and the District of Columbia." It was repealed by section 511(a) of the Overseas Differentials and Allowances Act (74 Stat. 792, P.L. 86-707, September 6, 1960). This repeal of the definition of "Continental United States" was accompanied by an amendment to the section which now is section 4 concerning the geographical application of that section. See Footnote 14. For a statement of the general background and purpose of the Overseas Differentials and Allowances Act see Footnote 13.

<sup>4</sup> The Director has caused a seal of office to be made for the Central Intelligence Agency and President Truman approved it by his issuance of Executive Order 10111 (3 C.F.R., 1949-1953 Comp., p. 302, February 17, 1950):

Executive Order 10111  
ESTABLISHING A SEAL FOR THE  
CENTRAL INTELLIGENCE AGENCY

WHEREAS section 2 of the Central Intelligence Agency Act of 1949, approved June 20, 1949 (Public Law 110-81st Congress), provides, in part, that the Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency of such design as the President shall approve; and

WHEREAS the Director of Central Intelligence has caused to be made and has recommended that I approve a seal of office for the Central Intelligence Agency the design of which accompanies and is hereby made a part of this order, and which is described in heraldic terms as follows:

SHIELD: Argent, a compass rose of sixteen points gules.

CREST: On a wreath argent and gules an American bald eagle's head erased proper.

Below the shield on a gold color scroll the inscription "United States of America" in red letters, and encircling the shield and crest at the top the inscription "Central Intelligence Agency" in white letters.

All on a circular blue background with a narrow gold edge;

AND WHEREAS it appears that such seal is of suitable design and is appropriate for establishment as the official seal of the Central Intelligence Agency;

(Footnote 4—Continued)

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by the said section 2 of the Central Intelligence Agency Act of 1949, I hereby approve such seal as the official seal of the Central Intelligence Agency.

Harry S. Truman

The White House,  
February 17, 1950.

A facsimile of the seal appears below the President's signature on the Executive Order, and is reproduced on the binder and the TITLE PAGE of this manual.

<sup>5</sup> These subsections of the Armed Services Procurement Act of 1947 (62 Stat. 21, P.L. 80-413, February 19, 1948, 10 U.S.C.A. 2301 et seq.), thus are authority for the Agency to negotiate purchases and contracts for supplies and services, without advertising, if—

- (1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;
- (2) the public exigency will not admit of the delay incident to advertising;
- (3) the aggregate amount involved does not exceed \$1,000;
- (4) for personal or professional services;
- (5) for any service to be rendered by any university, college, or other educational institution;
- (6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;
- (10) for supplies or services for which it is impracticable to secure competition;
- (12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;
- (15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier;
- (17) otherwise authorized by law.

(Footnote 5—Continued)

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377, P.L. 81-152, June 30, 1949, 40 U.S.C.A. 471 et seq.) in essence re-enacted the Armed Services Procurement Act to apply to the government generally. It also provides that nothing therein "shall impair or affect any authority of . . . the Central Intelligence Agency" (40 U.S.C.A. 474(17); see also page 112 of PART VI). Thus, procurement authority available to CIA includes the listed sections of the Armed Services Procurement Act, as well as the Federal Property and Administrative Services Act. Further, any amendments to the latter would be applicable with respect to CIA procurement. Since section 3(a) of the CIA Act adopts the listed provisions of the Armed Services Procurement Act in existence at the time of the enactment of the CIA Act, any subsequent amendment of any of those provisions would not be applicable automatically to CIA.

A 1965 amendment to the Federal Property and Administrative Services Act concerns automatic data processing equipment. See excerpts from that amendment and accompanying narrative at page 111 of PART VI, as to its application to national security and to CIA interests.

<sup>6</sup> These sections of the Armed Services Procurement Act (the Act is cited at Footnote 5) prescribe rules with respect to advertising for bids, types of contracts which may be negotiated, advance payments, liquidated damages and procurement for other agencies and joint procurement. Authorities similar to all of these, except procurement for other agencies and joint procurement, also are provided for the government generally by the Federal Property and Administrative Services Act (Footnote 5).

<sup>7</sup> The bracketed language is from section 3 as enacted in the CIA Act of 1949, rather than from section 3 as it has been codified at 50 U.S.C.A. 403c. As indicated in the PREFACE, section 3 is one of only two instances in the *Guide* in which a statute is set out in the language of the original act, rather than the language by which the act now is codified in the United States Code. This is necessary because of the following factor. As indicated in Footnote 5, only the listed Armed Services Procurement Act sections in force at the time of the enactment of the CIA Act, and not any subsequent amendments to those sections, are authorities available to CIA. Since some of the sections listed in 50 U.S.C.A. 403c are amended sections of the Armed Services Procurement Act of 1947, a listing of those sections would be a listing of some procurement authorities which had not been made applicable to CIA.

<sup>8</sup> At the time of the enactment of the CIA Act, the Executive was the principal staff officer of the Agency charged with overall coordination of Agency activities. By a reorganization of December 1, 1950, the Deputy Director for Administration was designated the Executive, for the purpose of exercising those Agency powers specifically delegated by law to the Executive. The office of the Deputy Director (Administration) was replaced by the office of the Deputy Director (Support), and the functions of the former transferred, effective February 3, 1955. The title was changed to Deputy Director for Support in August 1963.

<sup>9</sup> Sections 3(c) and (d) are nearly identical with corresponding provisions of the Armed Services Procurement Act and the Federal Property and Administrative Services Act (Footnote 5).

<sup>10</sup> Paragraphs (12) and (15) of section 2(c) of the Armed Services Procurement Act of 1947 are set out at items (12) and (15) in Footnote 5. Section 5(a) of that Act authorizes agency heads to make advance payments under negotiated contracts under certain circumstances and provided the agency head "determines that provision for such advance payments is in the public interest or in the interest of the national defense and is necessary and appropriate in order to procure required supplies or services under the contract."

The language keyed to this Footnote is in brackets for the reason set forth at Footnote 7.

<sup>11</sup> Footnote 10 is applicable also with respect to all the language keyed to this Footnote, except the reference to "section 4" of the Armed Services Procurement Act. The determinations and decisions required by section 4 of that Act are: (a) that contracts negotiated pursuant to section 2(c) are to contain a suitable warranty by the contractor "as determined by the agency head" that no person or selling agency was employed or retained by the contractor to solicit or secure the contract for a commission, percentage, brokerage, or contingent fee, except "bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business"; and (b) that in the case of a cost-plus-a-fixed-fee contract, a fee in excess of 10 per centum may not be allowed except upon certain determinations by the agency head. Also, the per centum is to be based on the "estimated cost of the contract" as determined by the agency head at the time of entering into such contract. Additionally, neither a cost, nor a cost-plus-a-fixed-fee contract, nor an incentive type contract may be used "unless the agency head determines that such method of contracting is likely to be less costly than other methods or that it is impractical to secure supplies or services of the kind or quality required without the use of" a contract of one of those types.

<sup>12</sup> Section 4, as enacted in 1949, provided:

#### EDUCATION AND TRAINING

SEC. 4. (a) Any officer or employee of the Agency may be assigned or detailed for special instruction, research, or training, at or with domestic or foreign public or private institutions; trade, labor, agricultural, or scientific associations; courses or training programs under the National Military Establishment; or commercial firms.

(b) The Agency shall, under such regulations as the Director may prescribe, pay the tuition and other expenses of officers and employees of the Agency assigned or detailed in accordance with provisions of subsection (a) of this section, in addition to the pay and allowances to which such officers and employees may be otherwise entitled.

(Footnote 12—Continued)

Section 4 was repealed, and sections 5, 6, 7, 8, 10, 11 and 12 were redesignated as sections 4, 5, 6, 7, 8, 9 and 10, respectively, by section 21 of the Government Employees Training Act (72 Stat. 327, P.L. 85-507, July 7, 1958). As to the original section 9, see Footnote 49. (See, at page 169 of PART VII, Executive Order 10805 exempting CIA from certain provisions of the Government Employees Training Act.)

<sup>18</sup> As enacted in the 1949 Act, this provision read "permanent-duty stations." The word "permanent" was deleted by section 323(a) of the Overseas Differentials and Allowances Act (Footnote 3).

The current section 4 of the CIA Act was patterned on the travel and benefits provisions of the Foreign Service Act of 1946 (60 Stat. 999, P.L. 79-724, August 13, 1946, 22 U.S.C.A. 801 et seq.). With later amendments to the Foreign Service Act, section 4 had become somewhat out of date. Additionally, provisions for overseas travel and allowances for government generally were not adequate for the increasing numbers of personnel from various government agencies going abroad. Therefore, in early 1955, the House Post Office and Civil Service Committee instituted a complete revamping of the law in this area for government generally. Recognizing the wisdom of having uniform travel and allowances for government employees assigned abroad, the Committee entertained a request both from the Department of State for the Foreign Service and from CIA to consider a uniform overseas travel and allowances act for government generally, including the Foreign Service and CIA. The resulting Overseas Differentials and Allowances Act in 1960, amending the Foreign Service Act and sections 1 and 4 of the CIA Act, as amended, and other laws, thus originated in the House Post Office and Civil Service Committee, rather than in the House Foreign Affairs and Armed Services Committees.

<sup>19</sup> As enacted in the 1949 Act, this provision read "outside the continental United States, its territories, and possessions." The current language was enacted by section 323(a) of the Overseas Differentials and Allowances Act (Footnote 3). This amendment was accompanied by the repeal of section 1(d), which defined "Continental United States." See Footnote 3.

<sup>20</sup> Attachment A of Bureau of the Budget Circular No. A-56 prescribes regulations governing travel and transportation expenses of government employees generally. By its terms it does not apply to "officers and employees transferred in accordance with the provisions of the Central Intelligence Agency Act of 1949, as amended." Since section 4 of the CIA Act provides authority to pay travel and transportation expenses of CIA personnel assigned to duty stations outside the 48 states and the District of Columbia, travel and transportation expenses for such persons may be paid under the authority of section 4, and Circular A-56 need not be utilized.

<sup>21</sup> As enacted in the 1949 Act, this provision read "orders issued by the Director in accordance with the provisions of section 5(a)(3) with regard to the granting of" home leave. The quoted language was deleted by section 511(e) of the Overseas Differentials and Allowances Act (Footnote 3).

<sup>17</sup> These sections of Title 50 are the Central Intelligence Agency Act.

<sup>18</sup> The term "furniture and household and personal effects," as used in paragraphs (1)(D) and (E) (but not in (1)(C) or (F)) is defined by section 301(d) of the Overseas Differentials and Allowances Act (Footnote 3) to mean "such personal property of an employee and the dependents of such employee as . . . the Director of Central Intelligence . . . shall by regulation authorize to be transported or stored under the amendments made by" that Act to paragraph (1)(D) and (E) "(including in emergencies, motor vehicles authorized to be shipped at Government expense)."

<sup>19</sup> Section 301(d) of the Overseas Differentials and Allowances Act (Footnote 3) provides that motor vehicles authorized, in emergencies, to be shipped at Government expense are "excluded from the weight and volume limitations prescribed by" paragraphs (1)(D) and (E) of section 4.

<sup>20</sup> Paragraph (1)(D), as enacted in the 1949 Act, read: "pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency who is absent under orders from his usual post of duty, or who is assigned to a post to which, because of emergency conditions, he cannot take or at which he is unable to use, his furniture and household and personal effects." It was amended to the current language by section 301(b) of the Overseas Differentials and Allowances Act (Footnote 3).

<sup>21</sup> See Footnote 19.

<sup>22</sup> Paragraph (1)(E), as enacted in the 1949 Act, read: "pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency on first arrival at a post for a period not in excess of three months after such first arrival at such post or until the establishment of residence quarters, whichever shall be shorter." It was amended to the current language by section 301(b) of the Overseas Differentials and Allowances Act (Footnote 3).

<sup>23</sup> Paragraph (3)(A), as enacted in the 1949 Act, read: "Order to the United States or its Territories and possessions on leave provided for in 5 U.S.C. 30, 30a, 30b, or as such sections may hereafter be amended, every officer and employee of the agency who was a resident of the United States or its Territories and possessions at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter: *Provided*, That such officer or employee has accrued to his credit at the time of such order, annual leave sufficient to carry him in a pay status while in the United States for at least a thirty-day period." It was amended to the current language by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

<sup>24</sup> Paragraph (3)(B), as enacted in the 1949 Act, read: "While in the continental United States on leave, the service of any officer or employee shall not be available for work or duties except in the agency or for training



(Footnote 24—Continued)

or for reorientation for work; and the time of such work or duty shall not be counted as leave." It was amended to the current language by section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3).

<sup>25</sup> By an amendment enacted in section 511(c) of the Overseas Differentials and Allowances Act (Footnote 3), the words "(as described in paragraph (3)(A) of this section)" and "(as so described)" replace, in each instance, the words "or its Territories and possessions" as enacted in paragraph (3)(C) of the 1949 Act.

<sup>26</sup> In the 1949 Act the word "automobile" appeared in two places in paragraph (C)(4). That word was replaced by the words "motor vehicle", the final two sentences of the paragraph were added, and minor editorial changes were made by an amendment enacted in section 323(b) of the Overseas Differentials and Allowances Act (Footnote 3).

<sup>27</sup> Section 5731(a) limits transportation expenditure to the rate of the lowest first class rate by the transportation facility used unless lowest first class accommodations are not available, or approval for use of a compartment or other accommodation "is required for security purposes."

<sup>28</sup> Section 5 of the 1949 Act consisted of subsections (a) and (b). By the 1958 repeal of section 4 and consequent renumbering, section 5 became section 4. See Footnote 12. Subsection (b) of the renumbered section 4, which together with subsection designation "(a)", were repealed by section 511(a) of the Overseas Differentials and Allowances Act (Footnote 3), provided:

(b) In accordance with such regulations as the President may prescribe and notwithstanding the provisions of section 1765 of the Revised Statutes (5 U.S.C. 70), the Director is authorized to grant to any officer or employee of the Agency allowances in accordance with the provisions of section 901(1) and 901(2) of the Foreign Service Act of 1946.

With the repeal of section 4(b), the executive order (Executive Order 10100 (3 C.F.R., 1949-1953 Comp., p. 295, January 28, 1950)) which implemented the section no longer has legal effect.

Under an amendment to section 912 of the Internal Revenue Code of 1954, enacted by section 523(a) of the Overseas Differentials and Allowances Act, "amounts received as allowances or otherwise" under section 4 of the CIA Act of 1949 "shall not be included in gross income and shall be exempt from" income taxation. It would appear that any per diem allowances in lieu of expenses paid under section 4 are exempt from income taxation by current Internal Revenue Regulations and Rulings and that the above amendment to the Internal Revenue Code is not necessary to such exemption. In view of the repeal of that portion of the renumbered section 4 which authorized the payment of certain allowances, namely subsection (b) (see above in this Footnote), it would appear that the only allowances exempted by the amendment to the Internal Revenue Code are per diem allowances.

<sup>20</sup> See at Footnote 46 a summary of a case in which a United States District Court dismissed a suit by a former Agency employee challenging the constitutionality of section 5 and section 8(b) of the CIA Act.

<sup>20</sup> Funds transferred under this authority and pursuant to a specific intra-government agreement thereby are obligated for use in furtherance of the specific project.

<sup>21</sup> These sections of Title 50 are sections 102 and 303 of the National Security Act.

<sup>22</sup> These sections of Title 50 are the Central Intelligence Agency Act.

<sup>23</sup> Section 543 prohibits the exchange of funds by disbursing officers for other than gold, silver or United States notes. Section 5(b) of the CIA Act thus permits Agency disbursing officers to procure foreign funds by exchange or purchase.

<sup>24</sup> The cited portion of the amended 1932 act (40 U.S.C.A. 278a) limits expenditures for the rental of premises, or for altering, improving or repairing rental premises, not to exceed 15 per centum of the fair market value of the premises or 25 per centum of the amount of the rent for the first year, respectively.

<sup>25</sup> The 1949 Act was amended by P.L. 82-53 (65 Stat. 89, June 26, 1951) to add a subsection (f) to what is now section 5, as follows:

(f)(1) Notwithstanding section 2 of the Act of July 31, 1894 (28 Stat. 205), as amended (5 U.S.C.A. 62), or any other law prohibiting the employment of any retired commissioned or warrant officer of the armed services, the Agency is hereby authorized to employ and to pay the compensation of not more than fifteen retired officers or warrant officers of the armed services while performing service for the Agency, but while so serving such retired officer or warrant officer will be entitled to receive only the compensation of his position with the Agency, or his retired pay, whichever he may elect.

(2) Nothing in this section shall limit or affect the appointment of and payment of compensation to retired officers or warrant officers not presently or hereafter prohibited by law.

Subsection (f) was repealed by section 402(a) of the Dual Compensation Act (78 Stat. 484, P.L. 88-448, August 19, 1964).

<sup>26</sup> This section of Title 50 is section 102(d)(3) of the National Security Act of 1947.

<sup>27</sup> Section 654 required the Civil Service Commission to publish annually a list of all persons "occupying administrative and supervisory positions" in the government. The list was to include also the official title and compensation of each person listed. Section 654 has been repealed by P.L. 86-626 (74 Stat. 425, July 12, 1960).

<sup>88</sup> Section 947(b) directed the Bureau of the Budget to determine quarterly the number of full-time employees required by each department and agency "for the proper and efficient performances of the authorized functions of" the department or agency and provided that excess personnel were to be released. Such determinations by the Director of the Bureau of the Budget and the numbers of employees paid in violation of his orders were to be reported to Congress quarterly by the Director of the Bureau of the Budget. Section 947(b) has been repealed by section 301 of P.L. 81-784 (64 Stat. 832, September 12, 1950).

<sup>89</sup> The laws concerning admissibility are sections 211 et seq. of the Immigration and Nationality Act of 1952 (66 Stat. 163, P.L. 82-414, June 27, 1952), as amended, now codified at Title 8, Chapter 12, Subchapter II, Part II of the United States Code. The regulations concerning admissibility are those issued by the Attorney General and published at Title 8, Chapter 1, Subchapter B of the Code of Federal Regulations.

<sup>90</sup> A United States Court of Appeals has cited this section as indicating that Congress has recognized that "aliens within this country are sources of foreign intelligence" (*Heine v. Raus*, 399 F. 2d. 785, July 22, 1968). See Footnote 21, PART I.

<sup>91</sup> Section 8 is the permanent law which authorizes expenditures by CIA. Because the phrase "for purposes necessary to carry out its functions, including," is an inclusive concept, that language authorizes expenditures for purposes additional to those named in paragraphs (1) and (2) of subsection 8(a).

Among other purposes for which expenditures are authorized by section 8(a), that section is the authority for the employment and compensation of personnel. See in this connection the excerpt from the Classification Act of 1949 at page 114 of PART VI. A Comptroller General decision (31 Comp. Gen. 191, November 21, 1951, summarized at page 190 of PART VIII) has held that retroactive salary "increases by the Central Intelligence Agency are not 'necessary to carry out its functions' within the meaning of the said section 10 [now section 8] and therefore, would be subject to legal objection." But see a later decision upholding retroactive pay increases under circumstances which had not existed at the time of the 1951 opinion (44 Comp. Gen. 89, August 20, 1964) at page 198 of PART VIII.

The language of section 8(a)(1) was patterned, in part, on statutes making appropriations for the Office of Strategic Services.

<sup>92</sup> Section 7901 provides in part:

(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

<sup>93</sup> Section 14 of Title 6 authorizes the purchase, under certain circumstances and subject to certain requirements, of surety bonds covering civilian officers and employees and military personnel "who are required by law or administrative ruling to be bonded."

<sup>44</sup> Section 259 prohibited contracts and payments for public buildings sites in excess of specific appropriations. Section 267 provided expenditure for public buildings until after the General Services Administration had prepared and the head of the agency which was to occupy the building had approved sketch plans and cost estimates. Sections 259 and 267 were repealed, subject to a savings clause applicable to certain projects specified by the repealing legislation, by section 17 of P.L. 86-240 (73 Stat. 479, September 9, 1959).

<sup>45</sup> Utilization of this authority enables the Agency to keep abreast of new legislation concerning travel and other fringe benefits which are deemed appropriate to apply to Agency employees.

<sup>46</sup> *Richardson v. Sokol*

This part of section 8(b), and section 5, were challenged in a law suit brought in 1968 by a former Agency employee in the United States District Court for the Western District of Pennsylvania against the Commissioner of the Bureau of Accounts, Treasury Department. The plaintiff sought a declaratory judgment that sections 5 and 8(b) were repugnant to Article I, Section 9, Clause 7, of the United States Constitution. Clause 7 provides that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." Plaintiff in effect contended that the named sections of the CIA Act operate to prevent the Commissioner from complying with Clause 7. The Court granted defendant's motion to dismiss. The Court quoted a leading Supreme Court decision that courts have no power *per se* to review and annul acts of Congress on the grounds that they are unconstitutional. That question, the Supreme Court said, may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Further, the Supreme Court held, the plaintiff must show not only that the statute is invalid, but also that he has sustained, or is immediately in danger of sustaining, some direct injury as a result of the enforcement of the statute, and not merely that he suffers in some indefinite way in common with people generally. In the 1968 case involving the CIA Act, the District Court held that the plaintiff asserted no special injury to himself resulting from the defendant's alleged failure to publish the required report. He did allege in oral argument "that his purported injury is based solely on his contention that defendant's compliance with the Act prevents plaintiff from gathering evidence in support of his proposition that there is a direct correlation between international discord and the amounts expended by the United States with reference to foreign affairs." The Court found such "injury insufficient to establish plaintiff's standing to raise a justiciable controversy" and dismissed the complaint. *Richardson v. Sokol*, 285 F. Supp. 866, May 8, 1968.

On appeal, the United States Court of Appeals, Third Circuit, affirmed, but on different grounds. The Court noted that under the relevant statute, district courts have original jurisdiction of civil actions only "wherein the matter in controversy exceeds the sum or value of \$10,000." Nowhere did the appellant allege that that amount was in controversy. Further, stated

(Footnote 46—Continued)

the Court, we cannot reasonably say that the complaint otherwise indicates "that the matter in controversy exceeds the value of \$10,000 . . . We conclude that the requisite jurisdictional amount does not appear affirmatively on the face of the complaint as it must in order for the district court to have jurisdiction." *Richardson v. Sokol*, 409 F. 2d. 3, April 9, 1969. The Supreme Court declined to accept an appeal. *Richardson v. Sokol*, 396 U.S. 949, November 24, 1969.

"In consequence of a directive by President Kennedy this authority to certify the expenditure of funds, and all other authorities which the Director is empowered to delegate, have been delegated to the Deputy Director. President Kennedy wrote the Director on January 16, 1962:

As head of the Central Intelligence Agency, while you will continue to have over-all responsibility for the Agency, I shall expect you to delegate to your principal deputy, as you may deem necessary, so much of the direction of the detailed operation of the Agency as may be required to permit you to carry out your primary task as Director of Central Intelligence. . . .

In consequence of this directive and in accordance with legal opinions by the Comptroller General of the United States (41 Comp. Gen. 429, January 2, 1962, set out at page 195 of PART VIII), the Department of Justice, and the General Counsel of CIA, Director John A. McCone on April 2, 1962, delegated to the Deputy Director

all authorities vested in me by law or by virtue of my position as Director of Central Intelligence and head of the Central Intelligence Agency, including, but not limited to, the certification authority set forth in section 8(b) of the Central Intelligence Agency Act of 1949, as amended, except for any authorities the delegation of which is prohibited by law.

This delegation has been continued by succeeding Directors and is set forth in an Agency regulation.

The Director's action of April 1962 delegated, in addition to the authorities normal to the conduct of a government agency and the authority to certify the expenditure of confidential funds under section 8, the administrative authorities in sections 4, 5 and 8 of the CIA Act, the authority in section 7 of the Act concerning the entry of aliens, and the authority, in section 2 of the Foreign Espionage Agents Registration Act (70 Stat. 899, P.L. 84-893, August 1, 1956, 50 U.S.C.A. 851, extracted at page 134 of PART VI), to exempt from registration persons who have been instructed or assigned in the espionage, counterespionage, or sabotage service or tactics of a foreign country or political party. Additionally the Deputy Director is authorized to exercise the authority in section 142(e) of the Atomic Energy Act of 1954 (68 Stat. 919, P.L. 83-703, August 30, 1954, 42 U.S.C.A. 2162(e), extracted at page 121 of PART VI) to make joint determinations with the Atomic Energy Commission for the removal from the Restricted Data category of information concerning the atomic energy program of other nations. The authority of the Director under section 102(c) of the National Security Act of 1947 to terminate employment of CIA personnel has been exercised only by the Director.

<sup>46</sup> Funds to be accounted for solely on the basis of such certificates are known as "unvouchered" or "confidential" funds. Statutory authority for the use of such funds has a long history in this country. The secret journals of the Continental Congress record numerous appropriations for military expenditures where the provisions for accounting were left to someone's absolute discretion or were omitted entirely. The current law authorizing their use by the President and the Secretary of State "for the purpose of intercourse or treaty with foreign nations" (31 U.S.C.A. 107) derives from a statute of 1793. For other examples in existing law of authority for the use of confidential funds see 10 U.S.C.A. 7202 (Secretary of Navy), 42 U.S.C.A. 2017(b) (Atomic Energy Commission) and 28 U.S.C.A. 537 (Federal Bureau of Investigation). See also the classified *Historical Study of the Use of Confidential Funds* (1953) compiled by the Office of General Counsel, CIA.

Because these funds are "to be accounted for solely on the certificate of the Director," any audit of expenditures of those funds by the Comptroller General of the United States would be limited to determining that such certifications had been made. In practice the Comptroller General does not conduct such audits; certifications made pursuant to section 8(b) nevertheless are retained as permanent Agency records.

Section 66a of Title 31 of the Code, enacted in 1950, provides that the "head of each executive agency shall establish and maintain systems of accounting and internal control designed to provide . . . adequate financial information needed for the agency's management purposes" and "effective control over and accountability for all funds, property and other assets for which the agency is responsible, including appropriate internal audit." In compliance with section 66a, Agency components conduct comprehensive audits of all such funds, property and other assets.

<sup>49</sup> As enacted in 1949, the current section 9 was section 11. It was designated as section 9 by P.L. 85-507 (Footnote 12). As enacted in 1949, section 9 provided:

SEC. 9. The Director is authorized to establish and fix the compensation for not more than three positions in the professional and scientific field, within the Agency, each such position being established to effectuate those scientific intelligence functions relating to national security, which require the services of specially qualified scientific or professional personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this section shall not be less than \$10,000 per annum nor more than \$15,000 per annum, and shall be subject to the approval of the Civil Service Commission.

The smaller amount was increased from \$10,000 to \$13,100 by P.L. 81-697 (64 Stat. 450, August 16, 1950). Section 9, as amended, was repealed in 1954 by section 601 of P.L. 83-763 (68 Stat. 1105, September 1, 1954), increases in compensation rates for government employees having obviated the need to compensate scientific personnel at rates higher than those applicable to General Schedule employees. See page 116 of PART VI as to more recent legislation concerning scientific pay rates.

STAT

TRANSMITTAL SLIP		DATE
TO: <i>O/DCI</i>		
ROOM NO.	BUILDING	
REMARKS: <i>Have ——— w/your back up material. Sue</i>		
FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241  
1 FEB 55REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)

TRANSMITTAL SLIP		DATE
TO: ER		
ROOM NO.	BUILDING	
REMARKS: <i>Original went over with 77-497 package to Adm. Turner. sfd 2/16</i>		
FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241  
1 FEB 55REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)